# DATA PRIVACY AND THE NIGERIAN STATE: TOWARDS AN EFFECTIVE DATA PROTECTION REGIME

**[1] Ibraheem .M. Mustapha & [1] Abdulmalik Fawaz .O**

[1] Faculty of Law, University of Ilorin, Kwara State

ibraheemustapha27@gmail.com

## ABSTRACT

*Unprecedentedly, data is infecting human life in a continually emerging and diverse form and has become the biggest asset regardless whether it is a business or an individual. Every bit of human life is now digitalized and added in a form of data as birth records, medical records, locations, bank or financial records, etc. mostly for our very own convenience compromising even the data security fundamentals. This sudden transformation has tipped nations of the World to find a solution to the use of emerging technologies without necessarily compromising of individual guaranteed rights. Given its sovereign nature, Nigeria has also made several attempts to protect the data of her citizen. Thus, this paper examines the Journey of Nigeria in enacting a law that will safeguard the privacy of its citizens, what the enacted laws have achieved and the challenges bedeviling its maximum implementation. The paper equally suggests ways to realize the full implementation of the law to better the lots of the nation and its citizens.*

***Keywords:*** *Data, Privacy Rights, Protection.*

## 1.0 INTRODUCTION

**Data** has acquired the status of being a valuable asset to human society today and as such, the world most valuable asset is no longer oil but data.[1] It is this significant status of data that informed legal scholars, data scientists as well as data analysts to assert that data has become inevitable to human existence. Thus, the increasing volume in use of personal data, together with the emergence of technologies enabling new ways of processing and using it, mean that regulating an effective data protection framework is more important than ever.[2] This has therefore led sovereign nations of which Nigeria is not left out to embark on provision of policies aimed at safeguarding the sanctity of the right to data privacy and protection of its citizens from interpolation, corruption and compromise as protecting data privacy is core to effective democratic and good governance.

Against this backdrop, this paper therefore set out to x-ray the concept of data privacy and protection, its importance in the Nigerian state and the regulatory framework put in place by the

[1] Introducing_a_Comprehensive_Data_Regime_in_Sirlanka_Lesson_from_Jurisdiction available at <https://www.academia.edu/26009366/> accessed on 28 February 2021

[2] Carlos Affonso Souza and others 'from privacy to data protection: the road ahead for the Inter-American System of human rights' [2020], *International Journal of Human Rights*, available at <https://doi.org/10.1080/136429879108> accessed on 28 February 2021

government in a bid to achieve an effective data protection regime in the country.

## 1.1 DATA PRIVACY AND THE REASON FOR DATA PROTECTION

With the exponential growth in terms of number of connected devices and subsequent data traffic, arise the question of data protection.[3] The term data protection and data privacy are often used interchangeably, they are nonetheless different. While data privacy defines who has access to data, data protection provides tools and policies to actually restrict access to the data. Data protection is the process of safeguarding important information from corruption, compromise or loss. It is the regulation designed to ensure the security of individuals' personal data and regulate the collection, usage, transfer and disclosure of the said data.[4] A data protection strategy is vital for any organization that collects, handles, or store sensitive data. It is pertinent to emphasize here that a strong data protection framework can empower individuals, restrain harmful data practices, and limit data exploitation. It is essential to provide the much-needed governance frameworks nationally and globally to ensure

[3] ibid
[4] 4 https://www.financialexpress.com/industry/technology/what-is-data-protection-and-why-is-it-important/2076419/lite/ accessed on May 10 2021

individuals have strong rights over their data, stringent obligations are imposed on those processing personal data (in both the public and private sectors), and strong enforcement powers can be used against those who breach these obligations and protections.[5] In essence, data protection law seeks to strike a balance between the rights of individuals to privacy and the ability of organizations to use data for the purposes of their business.

## 1.2 CURRENT LEGAL REGIME ON DATA PRIVACY AND PROTECTION IN NIGERIA

Whilst there available a pocket of industry specific legislations on data protection in Nigeria, **the Nigerian Data Protection Regulation (NDPR), 2019** constitutes the only comprehensive and holistic piece of data protection in Nigeria.[6] This was as a result of the giant stride of the National Information Technology Development Agency (NITDA) who commendably came up with the Nigeria Data Protection Regulations (NDPR) in 2019 which specifically addresses Data Privacy and Protection in Nigeria.[7] A copycat of the **EU GDPR**, the

[5] ibid

[6] Francis Ololuo , 6 Data Privacy and Protection under the Nigerian Law , *S.P.A. Ajibade & Co.* http://www.spaajibade.com/resources/data-privacy-and-protection-under-the-nigerian-law-francis ololuo/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration#_ftn35 accessed on March 1 2021

[7] ibid

regulation touches on principles of data processing, the requirement of Data Compliance Officers, requirement of data subject's consent for collecting and processing data, requirements for international transfers of data and rights of data subjects, inter alia. It also prescribes penalty for non-compliance with the regulation.[8]

As indicated earlier, aside the NDPR, there are other laws which touch on Data Privacy and Protection in Nigeria, which are briefly highlighted below. Such other laws and regulations include; The Constitution of the Federal Republic of Nigeria, 1999 (as amended) **Section 37** thereof guarantees and protects the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic materials.[9] Prior to the establishment of NDPR, all matters relating to privacy and data protection are enforced under this section; Cybercrimes (Prohibition, Prevention, etc.) Act, 2015[10] (the Cybercrimes Act); National Identity Management Commission Act, 2007[11] ('the NIMC Act'); The NCC Consumer Code of Practice Regulation 2007;[12] The NCC Registration of Telephone

[8] ibid
[9] CFRN 1999 as altered
[10] Cybercrimes Act 2015
[11] NIMC Act 2007
[12] The NCC Consumer Code of Practice Regulation Act 2007

Subscribers Regulation 2011; [13] The Freedom of Information Act 2011; [14] The Child Rights Act 2003; [15] National Health Act (NHA) 2014; [16] The Federal Competition and Consumer Protection Act 2019[17] are industry-based laws and regulations that are put in place for different purposes on data protection. In addition, the Draft Data Protection Bill, 2020 ('the Bill') is currently going through the legislative process.[18]

The quick implementation and enforcement of the NDPR by NITDA has shown its seriousness not only in ensuring compliance with data privacy and protection laws by data controllers and processors in Nigeria but also to build an effective system in the enforcement of data protection rights.[19]

Since its coming into force, the NDPR has strengthened the nation's data protection framework by ushering in a number of laudable developments thereby enhancing the privacy right.

The NDPR most importantly, has articulated the privacy rights of Nigerian citizens guaranteed under Section 37 of the 1999 Constitution as amended. In a notable ruling, the court of appeal

[13] The NCC Registration of Telephone Subscribers Regulation 2011
[14] The Freedom of Information Act 2011
[15] The Child Right Act 2003
[16] National Health Act 2014
[17] The Federal Competition and Consumer Protection Act 2019
[18] Nigeria - Data Protection Overview | Guidance Note | DataGuidance <https://www.dataguidance.com/notes/nigeria-data-protection-overview> accessed on 20th February 2020
[19] ibid

Ibadan judicial division has, on the 24th of September 2021, expressly ruled that data protection under the NDPR falls under section 37 of the 1999 constitution [see *Digital Rights Lawyers Initiative (DRLI) v National Identity Management Commission (NIMC)*].[20] Similarly, in a landmark decision, the Federal High Court in Abuja, in 2019, affirmed the data privacy rights of Nigerians and ordered the Nigerian Information Management Commission to protect the data rights of Nigerians beyond merely having bogus security policies which it had prior to the suit, failed to implement. [See also *Incorporated Trustees of Paradigm Initiative for Information Technology (PIIT) & Sarah Solomon-Eseh v National Identity Management Commission (NIMC)*].[21]

A loan shack known as Soko Loan was recently penalized under the NDPR with an order to pay 10 Million naira in fine for the compromise of the data of its customers. This could conveniently be regarded as the Nigeria's debut on NDPR sanction on annihilators of citizens' privacy. Prior to this development, quiet a number of occasions have existed where the application of NDPR have been attempted.

A very notable instance was a laudable development in the Nigerian data protection industry that came to shore on

[20] Appeal No. CA/18/291/2020
[21] ibid

Wednesday 19 August 2020, when the Federal Government took a very decisive step through the NIMC, by releasing draft data protection legislation in the form of the Bill for public reviews and comments in preparation for a validation workshop. In a very commendably transparent and unprecedented manner, the Bill was displayed on nine websites to aid accessibility and even distribution for the purpose of eliciting reviews and comments from stakeholders and interested persons. The Bill principally aims at establishing a data protection authority, to be named the Data Protection Commission like its Anglophone African counterparts in Ghana, Botswana, and Lesotho. In all, the Bill has 14 Chapters dedicated to 68 Sections and a Schedule containing supplementary provisions relating to the proceedings of the proposed supervisory authority.[22]

On **4 October 2019**, NITDA released a statement on the status of its investigation into a potential breach of privacy rights of Nigerians by Truecaller. However, NITDA is yet to commence enforcement actions against Truecaller for this possible breach of the NDPR.[23]

Also, in a not-too-distance time, the investigation of the Lagos Internal Revenue Service (**LIRS**) for publishing some Lagos State taxpayers' personal information on its website is a

[22] Ibid at 2 above
[23] ibid

manifestation of untiring effort of ensuring protection of citizens' data.[24]

## 1.3 KEY CHALLENGES OF THE NDPR IN PROTECTING DATA RIGHTS

Although, the provisions of the NDPR are laudable and set the tone for much potential in Nigeria's efforts at achieving a world class data protection status in which all data rights are protected, nonetheless, there exist few challenges.

**(1)** Some quarters believe the NDPR being a regulation and not a statute enacted by the National Assembly lacks the requisite force of law sufficient for addressing such an important subject.[25]

**(2)** Inadequate Awareness and Training on Data Privacy and Protection principles, roles and responsibilities.[26]

**(3)** There are issues on enforcement's actions given that the NDPR is fairly recent, there is a dearth of decided cases and enforcement actions on the provisions of the NDPR.[27] A recent breach of the NDPR was the Nigeria Immigration Service's publication of the international passport data page of a Nigerian

[24] ibid
[25] Ibid
[26] Ibid (n25)
[27] <https://www.mondaq.com/nigeria/data-protection/901494/data-protection-and-privacy-challenges-in-nigeria-legal-issues-#> accessed on 14th of May 2021

resident in the UK. The data was published on the Service's social media pages without the Data subject's consent but we are not aware of any sanction meted to the Immigration Service under NDPR.[28] Also, regulators are faced with the challenge of how to commence enforcement actions against data processors that have no corporate presence in Nigeria. Practically speaking, it is almost impossible to sanction data processors that have no corporate existence in Nigeria.[29]

(4) Breach reporting obligations are not taken seriously by organizations in Nigeria under the Data Protection Regulation.[30]

(5) The regulation solely "applies to all transactions intended for the processing of personal data and to actual processing of personal data… and natural persons residing in Nigeria or residing outside Nigeria but of Nigerian descent". The NDPR applying solely to personal data and natural persons means the regulation excludes other forms of corporate organizations respectively.[31]

[28] ibid
[29] Data Protection 2020 | Laws and Regulations | Nigeria | ICLG https://iclg.com/practice-areas/data-protection-laws-and-regulations/nigeria# accessed on March 1 2021.

[30] ibid
[31] ibid

(6) Organizations are failing to own their compliance story by building data privacy compliance programmes.[32]

## 1.4 ACHIEVING AN EFFECTIVE DATA PROTECTION REGIME IN NIGERIA: RECOMMENDATION

Nigeria's quest to achieving a compliant data protection status capable of securing database rights cannot be achieved overnight. Thus, the following are recommended for achieving a world class data protection law in Nigeria.

**Passage of the data protection bill (2020)**

As a foremost step, there is the need to subside the debate that the NDPR is merely a regulation brought up by a body and not a statute enacted by a law making body. This could be achieved by speeding up the enactment of the draft data protection bill (2020). The Act, if passed will not only crystallize the data rights of Nigerians it would also allay all fears pertaining to the genuineness of Nigeria's data protection regime.[33]

**Whistleblowing Disclosures**

The Nigerian Senate passed whistleblower's Protection Bill into law in 2017. The bill was known as "An Act to Protect Persons Making Disclosures for the Public Interest and Others from

[32] ibid

[33] <https://barristerng.com/data-protection-and-intellectual-property-a-global-approachtodissecting-emerging-legal-issues/> accessed on May 13 2021

Reprisals, to Provide for the Matters Disclosed to be Properly Investigated and Dealt with and for other Purposes Related Therewith". Based on this law, the Data Protection Commission or Regulator should introduce whistle blowing policy to encourage the report of data breaches that are normally kept hidden or denied by the respective organizations. The information received through whistle blowing disclosure must be used to develop intelligence for further investigations and subsequent enforcement actions.[34]

**Unified Database**

Data regulators are exploring ways to have a unified database that enables collaboration, such that regulators do not have to maintain separate databanks. For example, the NIMC manages the national identity database; the NCC manages telecommunication subscribers' personal information, while the CBN maintains BVN data. A unified database will afford the regulators to manage data effectively.[35]

Also, as data protection grow in importance to understand the world, the regulators will face the challenge of protecting them under the umbrella of many different cultural, economic and legal landscapes, it is therefore recommended that the regulators

[34] ibid
[35] ibid

always keep in touch with new trends and periodical review so as to meet standard of all material time.

**Need to Improve Capacity**

It is germane that NITDA as the principal body for data protection in Nigeria consolidates on its successes and takes steps to improve further. Whilst the agency must be applauded for opening investigations into a number of alleged data breaches, notably breaches by **TrueCaller, Surebet247 and the Lagos Inland Revenue Service**, the absence of sanctions or the non-publicity of same must be addressed.[36]

**The Use of Cryptography and Blockchain**

The use of cryptography and blockchain as secure techniques of information management is strongly recommended. Regulators should be constantly engaging the stakeholders to use secure techniques to process and store personal data.

[36] Data protection in Nigeria – enforcement in post COVID-19 digital economy | Biometric Update <https://www.biometricupdate.com/202101/data-protection-in-nigeria-enforcement-in-post-covid-19-digital-economy> . Accessed on March 1 2021

## 1.5 CONCLUSION

Nigeria has by the introduction of NDPR, popped up her game in data protection regime. We expect a paradigm shift in the way corporations and individuals carry on business and interact with respect to data in their possession. While attempt has been made to identify key challenges in the effective enforcement of these laws and regulations, a robust enforcement framework primed to give teeth to its provision will enable realization of its promise.